Skyline Builders, Inc. *and* United Brotherhood of Carpenters and Joiners of America, South Florida Carpenters Regional Council. Cases 12–CA–21783 and 12–RC–8695

September 10, 2003

DECISION AND ORDER REMANDING

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On January 14, 2003, Administrative Law Judge John H. West issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

1. The Respondent asserts that it was denied due process and a fair hearing by the judge's failure to: (1) continue the hearing until its owner and Vice-President John Watson was available to testify; and (2) institute subpoena enforcement proceedings in order to compel the testimony of its former employee Felix Mazanette. We do not agree.

With respect to Watson, we note that the Respondent did not subpoena him to testify. Rather, the General Counsel subpoenaed him to testify as a witness for the General Counsel. Although properly served with a copy of the General Counsel's subpoena, Watson did not appear at the hearing, and the Respondent has not provided any explanation for his failure to appear.[4] Moreover, the Respondent does not contend, nor does the record show, either that it advised the judge that Watson was needed as a witness for the Respondent or that it requested a continuance of the hearing. In these circumstances, we find that the

Respondent was not denied due process by the judge's failure to continue the hearing until Watson was available to testify.

Similarly, we find that the judge did not abuse his discretion or commit prejudicial error by failing to institute subpoena enforcement proceedings in order to compel the testimony of Mazanette. We note that the Respondent has proffered no evidence that it properly served Mazanette with a subpoena. Additionally, the Respondent does not contend, nor does the record show, that it requested the judge or the General Counsel to seek judicial enforcement of the subpoena, or that it requested a continuance of the hearing for that purpose. In these circumstances, the judge was under no obligation to continue the hearing or to seek enforcement of the subpoena sua sponte.[5]

2. The Petitioner filed nine objections to the election. Prior to the hearing, the Regional Director approved the Petitioner's request to withdraw Objection 9. The judge recommended that the Petitioner's Objections 1, 2, and 8 be sustained, and that Objections 3 through 7 be overruled. Absent exceptions, we adopt pro forma the judge's recommendation that Objections 3 through 7 be overruled. We also adopt his recommendation to sustain Objection 8, which parallels the meritorious complaint allegation that the Respondent, by its Vice-President John Watson, threatened on the day before the election "not to hire employees because they supported the Union and engaged in union activities."[6]

Because we adopt the judge's recommendation to sustain Objection 8 and affirm his conclusion that the Respondent engaged in other unfair labor practice conduct during the critical period which interfered with the election,[7] we find it unnecessary to pass on his recommendation that Objections 1 and 2 also be sustained.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] Chairman Battista joins his colleagues in adopting the judge's finding that superintendent Don Perala's interrogation of employee David Richardson violated Sec. 8(a)(1) of the Act. He finds it unnecessary to pass, however, on the judge's finding that the Respondent violated Sec. 8(a)(1) of the Act by interrogating employee Mike Solano, because the finding of an additional unlawful interrogation would be cumulative and would not affect the Order.

[3] We shall modify the judge's recommended order to remand the representation proceeding to the Regional Director to resolve the status of the determinative challenged ballots.

[4] The General Counsel elected to proceed with the case without instituting proceedings to enforce his subpoena.

[5] See *Best Western City View Motor Inn*, 325 NLRB 1186, 1187 (1998) ("[T]he Board institutes enforcement proceedings upon the request of the party on whose behalf the subpoena was issued. There is no abdication by the Board of its responsibility to determine the facts of a case if it does not institute enforcement proceedings sua sponte.")

[6] Objection 8 alleges that the Respondent "created an atmosphere of fear, intimidation and coercion by stating on the first day of the election, in front of employees, that it would never hire anyone that is a union member, nor let a union member work at Skyline." As found by the judge, while Objection 8 refers to "the first day of the election," it is clear from the record that the conduct alleged as objectionable actually occurred the day before the election.

[7] See, e.g., *White Plains Lincoln Mercury*, 288 NLRB 1133, 1139 (1988).

3. The judge, without conducting an investigation into the 22 determinative challenged ballots, set aside the election and remanded the representation case to the Regional Director for further appropriate action.

Contrary to the judge, we believe the proper procedure is to resolve the status of the challenged ballots before determining whether the election should be set aside. See, e.g., *Pay N' Save Stores*, 291 NLRB 979 (1988). A resolution of the challenged ballots may result in the Union receiving a majority of the eligible votes, which would make it unnecessary to set aside the election based on the Union's objections. Accordingly, we shall remand this proceeding to the Regional Director for a hearing on the eligibility of the challenged voters. Thereafter, the Regional Director shall issue a Supplemental Report on Challenged Ballots.

ORDER

The National Labor Relations Board adopts the recommended Order of the Administrative Law Judge and orders that the Respondent, Skyline Builders, Inc., Pompano, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that case 12–RC–8695 is remanded to the Regional Director for Region 12 for a hearing on the eligibility of the challenged voters. Thereafter, the Regional Director shall take further appropriate action, including the preparation of a supplemental report.

Following the service of the supplemental report, the provisions of Section 102.69 of the Board's Rules and Regulations shall apply.

Dated, Washington, D.C., September 10, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Marcia Valenzuela, Esq., for the General Counsel.
Alexander Caccavale, of Sunrise, Florida, for the Respondent.

DECISION

JOHN H. WEST, Administrative Law Judge. The charge in 12–CA–21783 was filed by the United Brotherhood of Carpenters and Joiners of America, South Florida Carpenters Regional Council (Union) on September 6, 2001.[1] It was amended on November 27 and February 27, 2002. A complaint was issued on July 31, 2002, alleging collectively that the Respondent engaged in unfair labor practices within the meaning of Sections 8(a)(1) and 8(a)(1) and (3) of the National Labor Relations Act, as amended, (the Act) in that assertedly it interrogated employees about their union support and activities, threatened not to hire employees because they supported the Union and engaged in union activities, and discharged employees Mike Solano and David Richardson because they joined, supported and assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in those activities. The Respondent filed an answer denying these allegations, except that the Respondent did not respond to the allegation that it threatened not to hire employees because they supported the Union and engaged in union activities.

By Order dated September 5, 2002, Case 12–CA–21783 was consolidated with Case 12–RC–8695 which involves objections filed on November 2 by the Union to conduct which allegedly affected the results of an election held on October 30. It was concluded in the Order, that the objections, described more fully below, and the challenged ballots (except for the challenge to the ballot of a specified individual) raise substantial and material issues which can best be resolved by a hearing.

A hearing on these consolidated cases was held before me in Miami, Florida on October 28 and 29, 2002. Upon the record, including the demeanor of the witnesses, and after due consideration of the brief filed by Counsel for General Counsel,[2] I hereby make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Florida corporation, with an office and place of business in Pompano Florida, has been engaged in the construction industry as a general contractor. The complaint alleges, the Respondent admits, and I find that at all material times herein the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

According to the testimony of the Respondent's President and part owner, Alexander Caccavale, the Respondent had one superintendent on the Marriott Renaissance jobsite just north of Miami, Florida, and the superintendent had the authority to hire, fire, lay off, and discipline employees.

The Respondent's Vice President and part owner, John Watson, was subpoenaed by Counsel for General Counsel to appear on the first day of the trial herein, October 28, 2002, General

[1] All dates are in 2001 unless otherwise stated.

[2] Counsel for General Counsel's motion to strike Respondent's three page letter (brief) for failure to comply with Sec. 102.42 of the Rules and Regulations of the National Labor Relations Board (Board) be, and it is hereby, granted.

Counsel's Exhibit 2. Caccavale indicated on the record on the 1st day of the trial herein that Watson was out of town when the involved subpoena arrived, Watson was due back in town on the afternoon of October 28, 2002, and Watson would be happy to appear at the trial herein on October 29, 2002.

General Counsel's Exhibit 8(a) is a "90-DAY EVALUATION PERIOD" form for Christopher G. McMann which indicates that his date of hire is "6/1/01" and his position is "Project Supt." On General Counsel's Exhibit 8(b), an "EMPLOYEE DATA FORM," for McMann, his job title of "Project Supt" is crossed out and "Supervisor" is written on the line. Caccavale testified that McMann was not a project superintendent of the Respondent but rather he was a supervisor; that as a supervisor McMann had the authority to hire, fire and lay off; that McMann was hired as a supervisor for the Life Care Center job but when he was transferred to the Marriott Renaissance job he did not have the authority to hire or fire; that the superintendent on the Marriott Renaissance job, Don Perala, had the authority to hire and fire; that if McMann was not on the Marriott Renaissance job he would have had the authority to hire or fire; that it was not true that Perala would follow McMann's recommendation without further investigation concerning hires and fires; and that in his affidavit to the Board he indicated that Perala would follow McMann's recommendation without looking further. McMann was not listed as an eligible voter in the Board election held on October 30.

On August 20, the Union filed a petition with the Board seeking to be certified as the representative of the Respondent's employees. A Board affidavit of service dated August 21, 2001 for the petition was received as General Counsel's Exhibit 10. And fax transmittal documents showing a fax transmission from the Board's Miami office to Caccavale were received as General Counsel's Exhibit 11.

On August 23, the Respondent discharged its employee Mike Solano, who was a deck foreman at the Marriott Renaissance jobsite. Solano did not have authority to hire, fire, or transfer, suspend, or discipline employees, or effectively recommend the hiring or firing of employees. One "EMPLOYEE CHANGE OF STATUS FORM," General Counsel's Exhibit 14(a), indicates that Solano's departure was a "VOLUNTARY TERMINATION" and the box on the form for "No Reason Given" is checked off. General Counsel's Exhibit 14(b) is a copy of General Counsel's Exhibit 14(a) with the check mark removed from "No Reason Given" and a check mark placed in the box for "Unsatisfactory Performance" under "INVOLUNTARY TERMINATION." General Counsel's Exhibit 14(b) also differs from General Counsel's Exhibit 14(a) in that in 14(b) in the comments box under "INVOLUNTARY TERMINATION" the following appears: "disrupted behavior."[3] The Respondent's pay register report as of "8/31/2001," General Counsel's Exhibit 19, indicates that during the involved pay period, Solano worked 40 hours.[4]

The Respondent's pay register report as of "9/07/2001," General Counsel's Exhibit 22 indicates that during the involved pay period, Solano worked zero hours.

Solano was hired by the Respondent in the beginning of June 2001 as a carpenter on the Marriott Renaissance job, and within hours of starting work he was made a deck foreman. He had been a carpenter for about 18 years and he had been a member of the Union for about 3 years. Solano began soliciting signatures on union authorization cards at the Marriott jobsite his second week on the job, speaking about the Union to 20–30 of the 40–50 employees the Respondent had on the job. Solano continued his efforts up until the day he was dismissed obtaining at least 20 signed union authorization cards. In July 2001 (or about 3–4 weeks before he was dismissed) he was soliciting signatures on union authorization cards during a rainstorm while the employees were being paid but not working. When McMann, who Solano described as a superintendent of the Respondent, saw him doing this, McMann said to him "you're organizing . . . you've got big balls Mike" (transcript page 182). Solano testified that he and Richardson were the main organizers on that jobsite; that about 2–3 weeks before he was dismissed (after McMann saw him soliciting signatures on union authorization cards) Superintendent Perala approached him at the Marriott jobsite and asked him "Mike you're not on the books are you" (transcript page 184); that he told Perala that he was; and that to be "on the books" means to be still affiliated with the Union. Solano further testified that when he was discharged Perala told him that Caccavale said that there was too much supervision and a low budget,[5] he hated to see him go because he knew how to push the men, and that he would be paid for Friday; that he believed that they were on the 7th floor of the Marriott Renaissance when he was dismissed; and that when he went to the jobsite the day after he was dismissed he saw about 10 new faces on the job. On cross-examination Solano testified that the supervisor of the Respondent who hired him, Bob Hana, knew that he was a member of the Union since he wore a union T-shirt when he was hired; that at the behest of Hana, he brought journeymen carpenters to the Marriott jobsite at the end of June or the beginning of July and Hana hired them; that McMann saw him soliciting signatures on union authorization cards just after a safety meeting had been concluded; and that 3 or 4 weeks before he was dismissed he exchanged words with Felix Maturell, the safety man, who did not follow his instructions to cover a hole near an end column with plywood; and that Watson asked him to let the matter go and he did.

The Respondent's former employee Richardson testified that he and Solano were the main union organizers on the Marriott Renaissance job; and that he witnessed supervisor McMann

[3] While Caccavale himself represented the Respondent at the trial herein, formerly attorney Harry 0. Boreth entered a notice of appearance, General Counsel's Exh. 7. There appears to be a striking similarity in the "r"s in Boreth's signature on General Counsel's Exh. 7 with the "r"s in the words "disrupted [sic]behavior." Nancy Sickmiller, who was an employee of the Respondent, signed General Counsel's Exh. 14 on the supervisor's line. At the trial herein Caccavale indicated that he could call her as a witness regarding the changes on General Counsel's Exh. 14(b). Sickmiller was never called as a witness. Superintendent Perala testified that Sickmiller was a secretary, she was not his supervisor, and she was not in charge of any of his men in the field.

[4] The Respondent's pay period is 1 week.

[5] Caccavale testified that he had nothing to do with Solano's discharge.

seeing Solano giving union authorization cards to a few of the Respondent's employees who spoke Spanish.

Respondent's Superintendent Perala worked on the Respondent's Marriott Renaissance job which was located at Pine Island Road and Interstate Highway 595. In addition to supervising the Respondent's employees on this jobsite, he also supervised the Respondent's subcontractors, Florida Coast Builders and R. J. Crane, both of which employed union employees. None of the Respondent's employees who worked on this job were union. Perala testified that Solano ceased working for the Respondent on the Marriott Renaissance job around the middle to the end of August 2001 because at the time the Respondent had to trim back supervision on this job; that he told Solano that he was terminated because there was a labor cutback; that at the time of Solano's termination he knew that Solano had worked union jobs before but he did not realize how involved Solano was; that Solano was not terminated because he believed that Solano had anything to do with the Union; that after Solano was terminated, he never filled Solano's position with anyone else; and that he did not believe that he ever asked any employee if they supported union activities on the Marriott project.[6] When asked by Caccavale what was McMann's position at the Marriott, Perala testified that McMann was a superintendent and performed layout duties at the Marriott Renaissance job. On cross-examination Perala testified that he made the decision to layoff Solano, he did not have any problems at all with Solano's work performance, and Solano was laid off due to labor cutbacks; that before Solano was laid off he knew that Solano had worked union jobs, Solano wore a union sticker on his hard hat, and Solano, along with a lot of the other employees on the Marriott Renaissance job, wore T-shirts with the Union emblem on them; that when he laid off Solano he did not know that Solano supported the Union; that the first layoffs from the Marriott Renaissance job occurred around mid-September 2001 and there could have been five or six employees laid off at that time; that in August 2001 there were 60–65 Skyline employees working on the Marriott Renaissance job; that there was a second layoff of Skyline employees at the Marriott Renaissance jobsite but he could not recall if it occurred in October 2001; that he did not recall how many employees were laid off during the third layoff at this job; that in October or November 2001, 11 or 12 employees were transferred from the Marriott Renaissance job to other of the Respondent's projects; that the 4th layoff occurred in January 2002 when the job was completed; and that to his knowledge Skyline did not rehire employees who were laid off in 2001.[7] Subsequently, Perala testified that the Respondent did not hire any additional employees after Solano was terminated.

On August 27, the Respondent discharged its employee David Richardson. Richardson was a layout man who had been on the Marriott Renaissance jobsite since May 2001. Caccavale testified that as a layout man, Richardson was a key part of the job. One "EMPLOYEE CHANGE OF STATUS FORM," General Counsel's Exhibit 13(a), indicates that Richardson's departure was a "VOLUNTARY TERMINATION" and the box on the form for "No Reason Given" is checked off. General Counsel's Exhibit 13(b) is a copy of General Counsel's Exhibit 13(a) with the check mark removed from "No Reason Given" and a check mark placed in the box for "Unsatisfactory Performance" under "INVOLUNTARY TERMINATION." General Counsel's 13(b) also differs from General Counsel's 13(a) in that in 13(b) in the comments box under "INVOLUNTARY TERMINATION" the following appears: "disrupted (sic] behavior."[8] The Respondent's pay register report as of "8/31/2001," General Counsel's Exhibit 18, indicates that during the involved pay period Richardson worked 40 hours. The Respondent's pay register 5 report as of "9/07/2001," General Counsel's Exhibit 21, indicates that during the involved pay period Richardson worked 2 hours. The Respondent's pay register report as of "9/14/2001," General Counsel's Exhibit 24, indicates that during the involved pay period Richardson worked zero hours.

Richardson has been a carpenter for 23 years and a layout carpenter for about 4 years. He was hired as a layout carpenter by the Respondent for the Marriott Renaissance job. He received $18 an hour whereas the regular carpenters received $13 or $13.50 an hour. As a layout carpenter, it was his responsibility to layout the building. Richardson has been a member of the Union since June 1997. He engaged in union activity while employed by the Respondent in that from mid-June 2001 until he was terminated on August 27 he would tell employees at breaktime and during lunchtime about the benefits of union representation, he handed out union authorization cards and he was involved in union meetings at the jobsite. Richardson testified that he spoke to about 25–30 employees about the Union; that at the time the Respondent had about 40–45 employees on the Marriott Renaissance job; that about 39 or 40 were interested in the Union and signed union authorization cards; that he and Solano were the main union organizers on the job; that the Respondent's superintendent at the Marriott Renaissance jobsite, Perala, in late July or early August 2001, asked him if he was a union carpenter and he told Perala that he was; that Per-

[6] Perala answered "[n]o" to the following questions asked by Caccavale: did you ever (a) ask any applicants if they had union background, (b) tell any applicants that they would not be hired because they supported the Union or if they engaged in any union activities, (c) fire anybody for supporting the Union, and (d) ask any employee if they attended union meetings or what went on at union meetings.

[7] Perala's daily reports from August 2001 to January 16, 2002 referring to the Marriott job were received as General Counsel's Exh. 29. His payroll records, which he supplied to the Respondent so that it could create a payroll register, were received as General Counsel's Exhs. 30 through 49. The Respondent's payroll records covering the period from January 5, 2001 to June 28, 2002 were received as Respondent's Exh. 8.

[8] As noted above, while Caccavale himself represented the Respondent at the trial herein, formerly attorney Harry 0. Boreth entered a notice of appearance, General Counsel's Exh. 7. There appears to be a striking similarity in the "r"s in Boreth's signature on General Counsel's Exh. 7 with the "r"s in the words "disrupted behavior." Nancy Sickmiller, who was an employee of the Respondent, signed General Counsel's Exh. 13 on the supervisor's line. As noted above, at the trial herein Caccavale indicated that he could call her as a witness regarding the changes on General Counsel's Exh. 13(b). Sickmiller was never called as a witness.

ala said that he did not like union carpenters because they thought highly of themselves and they were "actually fucking nothing" (transcript page 88); that Perala's attitude toward him changed dramatically after that conversation; that he tried to organize the Respondent's employees because of safety conditions which he discussed with Perala, Watson, and Caccavale; that on August 25, a Saturday, he spoke to Perala about inadequate support near an open elevator pit and open stairway and Perala told him to mind his own business; that on Monday August 27, he told Watson what happened over the weekend and Watson told him to mind his own business and started cursing; that later on August 27, he went to the company trailer to get some tools and Caccavale, with Perala present, told him "you're fired, you're not good for moral on the job, and you're no longer needed here, to take my tools, and to leave his equipment and tools there, and get off the jobsite, and don't come back here" (transcript page 91)[9] and that no one from management at Skyline or the general contractor ever told him that there was a problem with his work performance. On cross-examination Richardson testified that in June or July 2001, after he witnessed a piece of plywood falling out of rigging as it was lifted off the building and hitting an employee on the head, he telephoned OSHA and reported the problem but no one ever showed up at the jobsite; that he did not argue with Perala over safety issues but when he approached Perala about a safety issue Perala would "fuss about it" (transcript page 99); that when he told Perala about a problem Perala told him that he did not like his attitude and he was digging into business that did not concern him; that when he spoke to Watson about the employee getting hit on the head, Watson laughed and said that the employee got a wake up call; that Watson ignored his expressed safety concerns; and that he did not threaten Perala.

Subsequently Richardson testified that he never wore a union T-shirt to the Marriott Renaissance job but it was possible that he had a union sticker on his hard hat at that jobsite; that no one from Respondent's management ever made an issue of his wearing a union sticker on his hard hat if he did engage in such conduct; that when he was hired he told the superintendent who interviewed him, Frank, about the jobs he had previously worked; that all three of the jobs he described were union jobs; that he personally obtained signatures on 20–25 union authorization cards; that he did not think that anyone in management or supervision at the Respondent ever knew that he obtained signatures on union authorization cards; that when he discussed safety issues with Respondent's managers or supervisors, he was not accompanied by other employees; that he was not nominated by a group of employees to speak to Respondent's management or supervisors on the employees' behalf with respect to safety measures; and that employees would come to him and tell him about their safety concerns, i.e. the lack of railings in an area, because he was the layout carpenter.

At one point during his cross-examination of Richardson, Caccavale stated "[t]here's so much work out there it's unbelievable that somebody of this man's [Richardson's] caliber . . . would be out of work. They'd die to have a guy like that." (Transcript pages 105 and 106)

Perala testified that he terminated Richardson for disobedience and not performing his job; that Richardson was terminated for being very argumentative and refusing to do his layout duties; that he guessed that Richardson threatened him with bodily harm when he terminated Richardson; that Watson was there when this happened; and that he was not aware of an employee being hit on the head with a piece of plywood at the Marriott jobsite when the piece fell from the crane as it was lifted to the 4th floor. On cross-examination Perala testified that Richardson came to him with safety issues involving all employees probably at safety meetings and at other times. Subsequently, Perala testified that he worked with Richardson for 4–6 weeks before he terminated Richardson; that he was sure that he disciplined Richardson during that period for shortcomings in his work performance; that he did not document any prior discipline; that he discussed shortcomings in Richardson's performance with Caccavale at least three or four different times; that Richardson said to him "lets step out of the trailer and I'll kick your ass so to speak" (transcript page 291);[10] that this was the first time that Richardson indicated a willingness to fight; and that he was sure that he said something to Richardson about his failure to perform an assigned task in a timely manner resulted in the crew not being able to work, and this may have triggered Richardson's outburst.

On rebuttal, Richardson testified that no member of Respondent's management ever talked to him about concerns they had about his work performance or how fast he was performing his work; and that he never threatened anyone while he was employed by the Respondent. Subsequently Richardson testified that he did not recall any discussion on the day he was terminated with Perala about any tasks he was supposed to perform; that Perala did not say anything to him when he was discharged but rather Caccavale was the only person who said something to him at the time[11]; that he did not ask Perala to step outside the trailer on or about the day he was discharged by the Respondent; and that he never had a heated discussion with Perala.

General Counsel's Exhibit 20 is a copy of the Respondent's pay register report as of "09/07/2001" which indicates that Felix Maturell worked for 37 hours during this pay period. General Counsel's Exhibit 23 is a copy of the Respondent's pay register report as of "09/14/2001" which indicates that Felix Maturell worked for 40 hours during this pay period. General Counsel's Exhibit 25 is a copy of the Respondent's pay register report as of "09/21/2001" which indicates that Felix Maturell worked zero hours during this pay period. Caccavale testified that Maturell was no longer an employee of the Respondent at this time, he quit in 2001, and the Respondent did not have a

[9] While Caccavale represented the Respondent at the trial herein, and he was called as a Rule 611(c) witness by Counsel for General Counsel, Caccavale did not specifically deny this testimony.

[10] As indicated above, Perala testified that Watson was present when Perala terminated Richardson. Watson does not corroborate this. Indeed even though Counsel for General Counsel subpoenaed Watson and even though Caccavale indicated on the record at the trial herein that Watson would honor the subpoena, Watson did not testify at the trial herein for either Counsel for General Counsel or the Respondent.

[11] Caccavale did not deny this.

change of status form for Maturell. Richardson testified that a carpenter named Felix (Richardson did not remember his last name) had the responsibility to make sure that all of the handrails were up and the holes were covered.

By letter dated September 20, 2001, General Counsel's Exhibit 15, the Regional Director of Region 12 of the Board forwarded a copy of the charge in Cases 12–CA–21783 to the Respondent.[12]

Before the Board conducted election on October 30, the Respondent distributed T–shirts to employees which read "Vote No" and flyers which advised the employees to "Vote No," General Counsel's Exhibit 12. Caccavale testified that he told a union organizer that he was not interested in the Respondent becoming unionized in 2001; that he did not want to negotiate with the union over the terms and conditions of employment; and that he was afraid that having to negotiate with the union would affect his company financially.[13]

On October 29 the Respondent provided its employees at the Marriott Renaissance jobsite with lunch. This was the only time it provided its employees with lunch before the October 30 Board election.

Guillermo Choo, who is a millwright and a union member, testified that he went to the Marriott Renaissance jobsite on October 29 with Paul D'antuono, who is a union organizer; that someone from top management of the Respondent told the employees at the luncheon provided by the Respondent to vote no and there would be other jobsites that the Respondent was going to work on; that his friend, D'antuono said that if the Respondent had other jobsites, he wanted to go and work for the Respondent; that the manager from the Respondent said that D'antuono was not going to work for the Respondent, D'antuono asked why not, and the manager said because you are union; that the manager of the Respondent told the employees assembled that the Respondent had other jobs but if they voted for the Union, he was not going to transfer them to the jobsite; and that D'antuono then said did you guys hear that he is not going to hire me because I'm union. Subsequently Choo testified that on October 29, Respondent's manager told the employees at the Marriott jobsite to vote no because if they voted for the Union, Skyline was going to have another job and they would not be transferred over to the other jobsite; that D'antuono told Respondent's manager that if the company was going to another jobsite, he wanted to work for the Respondent; that the manager said that since D'antuono was union he would never work for the Respondent; that D'antuono then said he is not going to hire me because I'm union; that Respondent's manager asked him if he ever worked with his tools; that D'antuono did not have a union sticker on his hard hat nor was he wearing a union T-shirt, nor did he have anything on that day to identify him as a union; and that D'antuono did not identify himself as a union organizer.

Wallex Dumesle, who was employed by the Respondent as a journeyman carpenter at the Marriott Renaissance jobsite from May 30 until he was laid off on November 3—General Counsel's Exhibit 28, testified that he was present on October 29 at the Marriott Renaissance jobsite at lunchtime when Watson spoke to the Respondent's employees; that this was the only time the Respondent provided its employees with lunch while he was employed by the Respondent; that D'antuono, who identified himself as an ironworker, and Choo were there when Watson spoke to the employees; that when Watson spoke to the employees, D'antuono spoke up saying that the Union is not a 3rd party. It is the employees; that Watson asked D'antuono who he was and D'antuono said that he was an ironworker; that Watson then asked D'antuono what he was doing there since the Respondent did not have jobs for ironworkers; that Watson told D'antuono that he would not give him a job and D'antuono asked why; and that Watson said that he would not give D'antuono a job because he was union, and D'antuono said that was not fair. On cross-examination, Dumesle testified that a couple of the ironworkers who worked for the Respondent at the Marriott Renaissance jobsite were in the Union; that in August 2001, he started wearing union stickers on his hard hat and a union T-shirt while he worked on the Marriott Renaissance jobsite; and that he wore the hard hat all the time and the T-shirt once a week until the petition was filed and then he wore it every day. And on recross Dumesle testified that when he was laid off, he was working on the 9th floor of the Marriott Renaissance and the hotel had nine floors; and that he was not the only one laid off at that time.

A Board election was conducted on October 30. The tally of ballots showed that there were 62 eligible voters, 18 votes were cast for petitioner, 21 votes were cast against the participating labor organization, and there were 22 challenged ballots.

On November 2, the Petitioner filed timely objections to conduct affecting the election.

Reniel Rodriguez, a carpenter, testified that when he worked for the Respondent on its Pinecrest High School job he "organized for the [Board] election . . . [at the] Pinecrest High School [job]" (transcript page 216); that he did not wear union T-shirts to work; that the Respondent did not terminate him for his union activities; that when he was rehired by the Respondent after a higher paying job did not work out, he was not asked by the Respondent if he was affiliated with the Union; that the union meetings with employees were not held on the jobsite at Pinecrest High School but were held at a store on the corner after work; and that when he testified herein he was no longer a member of the Union.

Sony Lundy, who worked for the Respondent as a carpenter for 18 months, testified that he attended "meetings for the Union" (transcript page 220); that the Respondent never interrogated him about his union activities; that he left the Respondent when he obtained a better job; and that he worked on three jobs for the Respondent, which did not include the Marriott Renaissance job.

[12] Similar letters were forwarded when the charge was amended, General Counsel's Exhs. 16 and 17.

[13] The Union had a project agreement in late 2000 or early 2001 with the Respondent for the work it did on the Diplomat Hotel. The agreement covered only that job and the Respondent would not have been able to work the job without such an agreement because the Diplomat Hotel was a union-funded job and it was required that any contractor going on that jobsite would have to at least sign a project agreement to do work there. The Respondent did not have any other contracts with the Union.

Eddie Reynoso, who at the time of the hearing herein was employed by the Respondent as a carpenter's helper, testified that he worked at the Marriott Renaissance job; that he did not wear union paraphernalia; and that the Respondent did not ask him if he was a union member.

Jose Cruz, who at the time of the hearing herein was employed by the Respondent as a driver, testified that he was not in the Union, and the Respondent never interrogated him about union activities.

Adolfo Serrera, who at the time of the hearing herein was employed by the Respondent as a carpenter, testified that he has worked for the Respondent since September 2000, and since then he has never been laid off; that he is not a member of the Union; that the Respondent never interrogated him about union activities, and never asked him to wear a "Vote No" shirt; that the Respondent never passed out "Vote No" shirts; and that the Respondent never forced him to wear nonunion paraphernalia.

Ronald Cruz, who at the time of the hearing herein was a superintendent for the Respondent, testified that he held a union card but it was not up to date; that prior to the Board election, the Respondent did not discriminate against any of their employees for supporting the Union; that the Respondent does pass out "Vote No" shirts on the job; that he never told any applicants that they would not be hired for engaging in union activities; that he did not ask any employee what they thought of the Union or if they attended union meetings; that he was aware that on the day of the voting in the Board election, Reniel Rodriguez sat in a trailer on the side of the Union and he was not asked to nor did he terminate Rodriguez after that; and that he was a union member for 8 years and was a journeyman with them. On cross-examination, Ronald Cruz testified that the Respondent provided employees with "Vote No" shirts at the Marriott Renaissance jobsite; and that he did not work full-time on the Marriott jobsite at any time. On redirect, Ronald Cruz testified that on a few occasions he did work on the stairs at the Marriott Renaissance jobsite. And on recross, Ronald Cruz testified that the last time he paid union dues was 1994, and he guessed that he was no longer a union member if he did not pay union dues.

Respondent's Exhibits 6(a)–(g) are union flyers which were passed out at the Marriott Renaissance Hotel job.

B. Analysis

Paragraph 5(a) of the complaint alleges that on various occasions, in or around late July 2001, early August 2001, mid-August 2001, and late August 2001, on dates not more specifically known to the Regional Director of Region 12 of the Board, Respondent, by Don Perala, at Respondent's Marriott Renaissance jobsite, interrogated employees about their union support and activities. As set forth above, the Respondent called four witnesses who testified that they were not interrogated about their affiliation with the Union. The Respondent indicates that it has hired individuals who are in a union but it has never knowingly hired someone who is organizing for a union. Only one of the four, Rodriguez, testified that he organized for a Board election which was conducted at another of the Respondent's jobsites. However, the Respondent did not develop the record with respect to the extent of Rodriguez's organizing activities, Rodriguez did not wear union T-shirts to work, the union meetings with employees were held after work at a store which apparently was not on the jobsite, and the only union activity of Rodriguez cited by Superintendent Ronald Cruz was the fact that Rodriguez was a union observer at the Board election. Superintendent Ronald Cruz testified that he was not asked to terminate Rodriguez after he was an observer for the Union at the Board election. Superintendent Ronald Cruz did not testify that he knew anything about any organizing activity on the part of Rodriguez before the Board election. On the one hand, the Respondent did not show that it was aware of any organizing activity on the part of Rodriguez before the Board election. Indeed while the Respondent did rehire Rodriguez, the only union activity the Respondent refers to is the fact that Rodriguez was an observer at a Board election. On the other hand, it has been demonstrated by Counsel for General Counsel that the Respondent was aware of the organizing activity of Solano before he was discharged.[14] Solano's testimony about the interrogation is credited. Perala asked him, after Supervisor McMann saw him soliciting signatures on union authorization cards, if he was on the union books.[15] Perala was not a credible witness. As concluded below, Perala fabricated a scenario with respect to the termination of Richardson. While Perala denied engaging in certain conduct, he never specifically denied asking Solano if he was on the books. This was not an isolated incident. As concluded below, the Respondent does not deny that before the Board election, it told employees that they would not be hired for other jobs if they were in the Union. While Solano wore a union T-shirt to the Marriott Renaissance job before this, he was not asked if he was on the union books until after he was seen by McMann soliciting signatures on union authorization cards. The Respondent differentiated between someone who would wear a union T-shirt or a union sticker on his hard hat, and someone who was organizing for the Union. The former was not discriminated against. The latter was. The former was not considered a threat. The latter was. In asking Solano if he was on the union books, Perala was putting Solano on notice that he was aware of Solano's union activities. It might be argued that since Solano continued his organizing activities, he was not intimidated and the interrogation was not coercive. The test is not a subjective test, however. The timing of the interrogation, only after Solano was seen by a supervisor soliciting signatures on union authorization cards, and the context in which it occurred, during an organizing drive when other unfair labor practices occurred, warrants the conclusion that Solano's interrogation by Perala was coercive.

As noted above, Perala was not a credible witness. Richardson's testimony regarding his interrogation by Perala is cred-

[14] Although Solano was a deck foreman, he was not a supervisor in that he did not have the authority to hire, fire, transfer, suspend, lay off, or discipline employees, or effectively recommend the hiring or firing of employees.

[15] Even Caccavale in his affidavit indicated that on the Marriott Renaissance job, Perala would follow McMann's recommendation regarding hiring and firing without looking further. McMann was a supervisor. He was viewed as a supervisor by the employees. Perala described McMann as a superintendent. And McMann was not on the list of eligible voters for the October 2001 Board election.

ited. Richardson was not open about his union organizing. Indeed Richardson speculated that no one in Respondent's management or supervision ever knew that he obtained signatures on union authorization cards. But he personally obtained signatures on 20–25 union authorization cards from the approximately 45–60 employees on the job at the time, he was involved in union meetings at the jobsite, and he was one of the two main union organizers on the job. Both Solano and Richardson were interrogated by Perala. It has not been demonstrated that any other employee was interrogated by Perala regarding the Union. Perala either knew of or suspected Richardson's organizing activities and he wanted to put Richardson on notice that he was aware of what was going on. Richardson's testimony that Perala's attitude toward him changed dramatically after the interrogation was not refuted by the Respondent. The interrogation was coercive. The Respondent violated the Act as alleged in paragraph 5(a) of the complaint.

Paragraph 5(b) of the complaint alleges that on or about October 29, Respondent, by John Watson, at Respondent's Marriott Renaissance jobsite, threatened not to hire employees because they supported the Union and engaged in union activities. The Respondent did not deny this in its answer to the complaint. Consequently this allegation is admitted. Additionally, Watson did not testify to deny this allegation notwithstanding the fact that he was subpoenaed by Counsel for General Counsel. The unrefuted testimony of the witnesses for Counsel for General Counsel about what Watson said at the October 29 luncheon at the jobsite is credited. The Respondent violated the Act as alleged in paragraph 5(b) of the complaint.

Paragraph 6 of the complaint alleges that on or about August 23, Respondent discharged Solano, and on or about August 27, Respondent discharged Richardson because they joined, supported and assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

As set forth by the National Labor Relations Board (Board) in *Fluor Daniel, Inc.*, 304 NLRB 970 (1991):

> In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st dr. 1981), cert. denied 455 U.s. 989 (1982) the Board set forth its causation test for cases alleging violations of the Act turning on employer motivation. First the General Counsel must make a prima fade showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once accomplished, the burden then shifts to the employer to demonstrate that the same action would have taken place notwithstanding the protected conduct. It is also well settled, however, that when a respondent's stated motives for its actions are found to be false, the circumstances may warrant an inference that the true motive is an unlawful one that the Respondent desires to conceal. The motive may be inferred from the total circumstances proved. Under certain circumstances the Board will infer animus in the absence of direct evidence. That finding may be inferred from the record as a whole. [Footnote omitted.]

In order to establish a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel must establish union or concerted protected activity, employer knowledge, animus and adverse action taken against those involved or suspected of involvement which has the effect of encouraging or discouraging union or concerted protected activity. Inferences of animus and discriminatory motivation may be warranted under all the circumstances of a case, even without direct evidence. Evidence of false reasons given in defense may support such inferences.

General Counsel has demonstrated that Solano engaged in union activity, the Respondent knew of Solano's union activity when he was terminated, there was antiunion animus of the part of the Respondent, and taking the adverse action against Solano had the effect of discouraging union activity. General Counsel has made a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the Respondent's decision.

Has Respondent demonstrated that the same action would have taken place notwithstanding the protected conduct? Solano was Laid off when the Respondent was working on the 7th floor of the project. The Respondent still had to complete the 8th, and 9th floors and the roof. Caccavale claims he was not involved in the decision to lay off Solano. Perala testified that Solano was laid off because the Respondent had to trim back on supervision. But Solano was not a supervisor. He was paid slightly more than the other carpenters but this was for being a deck foreman. The Respondent did not demonstrate that any supervisors were laid off when Solano was laid off. Solano was a credible witness. Perala was not a credible witness. Solano's testimony that when he was laid off, Perala told him that Caccavale said that there was too much supervision is credited. This is what Perala told Solano when he laid off Solano. Caccavale, however, never testified that he told Perala that there was too much supervision before Solano was laid off. When he testified at the trial herein, Perala testified that Solano was terminated because the Respondent had to trim back supervision and there was a labor cutback. But the labor cutbacks did not commence until mid-September 2001, about 3 weeks after Solano was laid off. The Respondent has not demonstrated that Solano would have been laid off when he was notwithstanding his protected conduct. Additionally, as pointed out by Counsel for General Counsel in her brief herein, Solano's termination documents, the Change of Status forms, are not only inconsistent with each other, but they are inconsistent with the reason supplied by Perala for Solano's termination. Respondent's reason for Solano's termination is pretextual.[16] The Respondent has violated the Act as alleged in paragraph 6(a) of the complaint.

General Counsel has demonstrated that Richardson engaged in union and concerted protected activity, the Respondent knew of Richardson's concerted protected activity when he was terminated, there was antiunion animus on the part of the Respon-

[16] Additionally, Counsel for General Counsel points out that the Respondent's own documents, when viewed in conjunction with Perala's underlying payroll documents, demonstrate that it rehired and hired a large number of employees to work at the Marriott jobsite after Solano was discharged, and hired and rehired numerous employees after the Marriott job ended.

dent, and taking the adverse action against Richardson had the effect of discouraging union and concerted protected activity. General Counsel has made a prima fade showing sufficient to support the inference that protected conduct was a motivating factor in the Respondent's decision.

Has Respondent demonstrated that the same action would have taken place notwithstanding the protected conduct? Caccavale testified that the sole reason for Richardson's termination was "due to the verbal exchanges told to . . . by John Watson" (transcript page 49). As noted above, Richardson testified that Caccavale, with Perala present, told him "you're fired, you're not good for moral on the job, and you're no longer needed here, to take my tools, and to leave his equipment and tools there, and get off the jobsite, and don't come back here." Caccavale did not specifically deny Richardson's testimony. Richardson's testimony is credited. Also, at one point during the trial herein Caccavale stated that employers would "die" to have someone of Richardson's caliber working for them. That being the case, why did the Respondent fire Richardson? Perala's explanation is not credited. It is a fabrication.[17] Watson, who according to Perala, was there at the time, did not testify to corroborate Perala that Richardson threatened Perala with bodily harm. While according to Perala, he previously disciplined Richardson for shortcomings in his work performance, there was no documentation to support this allegation. And while according to Perala, he discussed the shortcomings in Richardson's work performance at least three or four different times with Caccavale, Caccavale did not corroborate Perala on this point. If Perala did discuss on three or four occasions the shortcomings of Richardson's performance while Richardson worked for the Respondent, why did Caccavale at the trial herein state that employers would "die" to have someone of Richardson's caliber working for them? The reasons given by the Respondent do not demonstrate that there was a business justification for discharging Richardson, and they do not demonstrate that the Respondent would have discharged Richardson absent his concerted protected activity. While there may be a question whether the Respondent knew of Richardson's union activity, there is no question but that the Respondent knew of Richardson's concerted protected activity. Richardson spoke with the Respondent's management about safety concerns such as insufficient decking, open elevator shafts, open stairways, and the lack of water for employees on a hot day. Such concerns on their face involved not only Richardson but the people working on this jobsite. It was not refuted that employees came to Richardson and told him about their safety concerns, i.e. the need for railings in an area, etc., because he was the layout carpenter, and because, albeit they wanted to take it up with management, they believed that Richardson was in a better position to get management to address the employees' safety concerns. Richardson's testimony that he conveyed the safety concerns of the employees to management was not refuted. While it was not made a matter of record whether Richardson specifically told the Respondent's management or supervisors that he was acting for or on behalf of other workers when he complained about safety concerns, it was obvious from the nature of the safety complaints that Richardson was not just concerned about his own well being. Indeed, as noted above, even Perala testified that Richardson came to him with safety issues involving all employees probably at safety meetings and at other times. In view of this, even though Richardson did not bring the other employees with him on those occasions when he expressed his safety complaints when he met individually with members of management, the Respondent had reason to believe that Richardson was not acting alone. Richardson's safety complaints were concerted because he consulted with other employees before he spoke to management and supervisors about safety concerns, because they involved mutual aid or protection, and because the Respondent, as pointed out by Perala, was aware that Richardson—at safety meetings when other employees were present and at other times when other employees were not present—was speaking about safety issues involving all employees. The Respondent has not demonstrated that it would have discharged Richardson absent his protected concerted activity. The Respondent has violated the Act as alleged in paragraph 6(b) of the complaint.

[17] As noted by Counsel for General Counsel on brief, the Respondent's termination documents for Richardson, the Change of Status forms, are inconsistent with each other and the Respondent did not even attempt to clear up the inconsistency other than to have Perala testify that Sickmiller was not a supervisor on the Marriott job.

III. THE OBJECTIONS

As noted above, the Union/Petitioner filed the following objections to conduct allegedly affecting the results of the election:

> 1. Skyline Builders, Inc., (hereinafter, "the Employer"), by and through its agents, interfered with, restrained, and/or coerced its employees in the exercise of their rights guaranteed by section 7 of the National Labor Relations Act, (hereinafter, "the Act").
>
> 2. The Employer, by and through its agents, created an atmosphere of fear, intimidation and coercion, interfering with the laboratory conditions necessary for the conduct of a fair election.
>
> 3. The Employer, by and through its agents, intimidated employees by forcing them to wear vote no for the union T-shirts on the days of the election and to the polling site, and by threatening them with termination if they did not wear the vote no T-shirts (sending the message that they would be terminated if they did not vote against union).
>
> 4. The Employer, by and through its agents, held anti-union "captive audience" meetings prior to the election.
>
> 5. The Employer, by and through its agents, created an atmosphere of fear, intimidation and coercion, interfering with the laboratory conditions necessary for the conduct of a fair election by telling employees that if they voted in the Union, they would be out of a job by Christmas.
>
> 6. The Employer created an atmosphere of fear, intimidation and coercion by surveilling employees at the polling place.
>
> 7. The Employer created an atmosphere of fear, intimidation and coercion by interrogating employees about

their vote at the polling place and on the days of the election.

8. The Employer created an atmosphere of fear, intimidation and coercion by stating on the first day of the election, in front of employees, that it would never hire anyone that is a union member, nor let a union member work at Skyline.

The petitioner, with the approval of the Regional Director for Region 12, withdrew its objection number 9.

The Union/Petitioner did not itself introduce any evidence with respect to objections. In view of the findings made in this decision regarding the involved alleged unfair labor practices, objections 1, 2 and 8 are sustained. They warrant setting the election aside. The remainder of the objections are overruled.

While objection 8 refers to "the first day of the election," the involved unlawful conduct actually occurred the day before.

IV. THE CHALLENGED BALLOTS

The Board agent conducting the election challenged the ballots of nine individuals because their names, including that of Richardson, were not on the eligibility list provided by the Employer. The ballots of nine individuals were challenged by the Petitioner as not being in the job classifications covered by the bargaining unit. The ballots of three individuals were challenged by the Petitioner on the grounds that they are supervisors within the meaning of the Act. And the ballot of one individual was challenged by the Employer on the ground that he was not in the job classification covered by the bargaining unit.

In her Order consolidating cases for hearing and notice of hearing, which was issued on September 5, 2002, the Regional Director for Region 12 indicated that an investigation of the issues raised by the challenged ballots had been conducted, and based on the conflicting positions of the parties as to the eligibility of the challenged voters, it was her conclusion that the challenged ballots raise substantial and material factual issues which can best be resolved at a hearing.

Other than the evidence introduced in the unfair labor practice proceeding regarding Richardson, no evidence was introduced regarding the challenged ballots.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by interrogating employees about their union support and activities, and by threatening not to hire employees because they supported the Union and engaged in union activities.

4. Respondent violated Section 8(a)(1) and (3) of the Act by discharging Mike Solano and David Richardson because they joined, supported and assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

5. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Sections 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor-practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

The Respondent having discriminatorily discharged employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

Skyline Builders, Inc., of Pompano, Florida, its officers, agents, and representatives shall

1. Cease and desist from

(a) Coercively interrogating any employee about union support or union activities.

(b) Threatening not to hire employees because they supported the Union and engaged in union activities.

(c) Discharging or otherwise discriminating against any employee for supporting UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, SOUTH FLORIDA CARPENTERS REGIONAL COUNCIL or any other union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Mike Solano and David Richardson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Mike Solano and David Richardson whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the Decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board

[18] In the event no exceptions are filed as provided in Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Pompano, Florida and at all of its jobsites in southern Florida copies of the attached notice marked "Appendix"[19] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since late July 2001.

Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix" to all employees who were employed by the Respondent at its Marriott Renaissance jobsite in Miami, Florida at any time from the onset of the unfair labor practices found in this case until the completion of these employees' work at that jobsite. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that all of the objections, except objections 1, 2, and 8, are overruled.

AND IT IS FURTHER ORDERED that the election conducted in Case 12–RC–8695 be set aside and this matter be remanded to the Regional Director to take whatever action she deems appropriate under the circumstances existing here.

Dated, Washington, D.C. January 14, 2003

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, SOUTH FLORIDA CARPENTERS REGIONAL COUNCIL or any other union.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT threaten not to hire you because you support UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, SOUTH FLORIDA CARPENTERS REGIONAL COUNCIL and engaged in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer Mike Solano and David Richardson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Mike Solano and David Richardson whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Mike Solano and David Richardson, and WE WILL, within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

SKYLINE BUILDERS, INC.